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October 20, 2008

Philip B. Chandler
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RESPONSE TO COMMENTS ON DRAFT POST-CLOSURE PERMIT RENEWAL
MONTEZUMA HILLS FACILITY, SOLANO COUNTY, CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY ID NO. CAD079089512

Dear Mr. Chandler:

The Department of Toxic Substances Control (DTSC) received an email from you on August 28, 2008 at 10:21 PM regarding comments on the Draft Post-Closure Permit (Draft Permit) Renewal for the Montezuma Hills Facility located near Rio Vista, California. The Public Comment Period for the Draft Permit began on July 15 and ended on August 28, 2008 at 5:00 p.m., as stated in the public comment notice. DTSC's reply to your comments are presented in the "response" sections below.

Comment: The document on the public access website is mislabeled----it is only part of the post-closure permit. It is also noted that DTSC once again shaves the "...at least 45 days for public comment." Period required by California Code of Regulations, title 22, section 66271.9(b)(1). The regulations do not require 44 2/3 days but 45 days. As DTSC so frequently states in its own documents, days are assumed to mean calendar days not business days. DTSC's public notice has mis-represented the time allowed for public comment again and again.

Response: California Code of Regulations, title 22, section 66271.9(b)(1) states the following: Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under subsection (a) of this section shall allow at least 45 days for public comment.

This regulation does not specify fractions of a day. Since the comment period ended on the 45th day and the public comment notice clearly stated all comments must be received by 5 p.m on the 45th day, DTSC has complied with this requirement.

Comment: PART III.1 - The permit is described as consisting of

[Attachment A], which is about 16 pages long, give or take a figure or two, a permit application, dated July (what?????---hopefully not after July 16???), 2008, which is "... made part of this permit by reference." Only "Attachment A" is provided to the public as part of the review documents. This is an inappropriate and deceptive practice on the part of DTSC. Although DTSC touts transparency, it consistently fails to deliver as part of its permitting practice. The actual date of the application needs to be included here.

Response: The Draft Hazardous Waste Post-closure Facility Permit for IT Environmental Liquidating Trust is 18 pages long, which includes two Attachments, A and B. Attachment A, on page 17 is identified as the Montezuma Hills Facility Location Map and Attachment B, on page 18 is identified as the Montezuma Hills Facility Map.

The Permit and the related referenced documents were available in the Rio Vista Library and DTSC repositories on the start date of the Public Comment Period. In addition, the subject documents were posted to EnviroStor during the comment period. The internet address was posted in the July 2008 Fact Sheet, which was also posted on DTSC's website. Although the Permit Application is dated July 2008, the specific day not included, the cover letter for this document is dated July 2, 2008, prior to the start date of the Public Comment Period. This information was also made available to the public in the repositories during the comment period and on the internet during the comment period.

Comment: PART IV - If there are active and inactive units why isn't this also titled an Operating Permit? Please explain the specific WCA landfill environmental monitoring requirements under articles 6 and 17. If the Groundwater Evaporation Basin is an active unit, why does DTSC state that activities are limited to post-closure care at it? The GWEB appears to be a cheap leachate treatment plant and as such is an operating unit. This permit is inappropriate and does not satisfy the applicable regulations. DTSC can't have it both ways----operating on one hand and closed on another. Please explain the tortured regulatory basis that DTSC uses to regulate an active, operating unit, under post-closure rather than operation.

Response: California Code of Regulations, title 22, section 66264.310(b)(2) under Closure and Post-Closure Care states the following relevant requirement for owners or operators conducting post-closure care after closure:

Continue to operate the leachate collection and removal system until leachate is no longer detected;

Continued operations of a leachate collection and removal system are an integral part of care for a Post-Closure Facility. Thus, the operating aspects of the Facility is inherent in the post-closure regulatory requirement above; "continue to operate".

Comment: PART IV – The WCA is described as a covered landfill---- generally a requirement. Since it was created in 1991, it should have had a liner. Is the description an oversight or does the DTSC-created landfill not have a liner? If it doesn't, please describe the environmental monitoring? Does it comply with all of the title 22 requirements for a landfill constructed in 1991? If not what special environmental monitoring requirements are in place. It is assumed that enhanced monitoring would be required if it wasn't constructed to par?

PART IV – Does the GWEB have a liner? Does it comply with all of the title 22 requirements for an impoundment constructed in 1991 or whenever? If not what special environmental monitoring requirements are in place. It is assumed that enhanced monitoring would be required if it wasn't constructed to par?

Response: Both features are lined. Information regarding the liners is referenced on page 14 of the Permit Application: IT, 1991, *As-Built Construction Report, Montezuma Hills Facility Closure, Phase I Site Work, Volume I-a and I-b*, February. The WCA includes 2 feet of compacted fill overlain by 3 feet of compacted clay, a 30 ml PVC liner, drainage net and filter fabric, and a 1-foot layer of vegetative soil cover. The GWEB includes 3 feet of compacted clay, a 60 ml HDP liner, a leak collection recovery system, one foot of silty clay, and another 60 ml HDP liner. The Facility is monitored by a network of more than 80 monitoring points including shallow and deep groundwater-bearing zone point of compliance wells, background and supplemental wells, surface impoundment wells, drainage sumps, slurry wall water level monitoring points, recovery wells, dewatering system piezometers, trench piezometers, and supplemental piezometers. The Facility complies with title 22 requirements.

Comment: PART IV – The waste codes should be described whether or not

the WCA is a closed unit. DTSC has previously stated that the GWEB is active. It cannot have this both ways. Surely waste codes should be included for it? DTSC seems to pick and chose what elements of a permit it will include from place to place in this Part. This permit is incomplete and needs to be withdrawn and revised---no Waste Types, no RCRA Waste codes, no California Waste Codes. The GWEB itself is a water body and surface water monitoring is appropriate. When and if the GWEB overflows, perhaps in a rainy cycle, it would be nice to know the concentrations of waste constituents that the environment would receive. Sudden release is a possibility---- regardless of the NOE that DTSC seeks to use to avoid environmental analysis. Please explain whether any volatile constituents or decomposable materials were relocated into the WCA. Vadose zone monitoring is a requirement of Articles 6 and 17. Insufficient justification is provided here to neglect those requirements. Is the vadose zone is so limited in thickness that it is in continuity with the GWEB? If so, then the GWEB is actually a large injection "well" and the permit needs to be revised to reflect that and appropriate WDRS must be in place. Please explain. If there is uncertainty about continuity, then the monitoring should occur to determine whether or not waste discharge is occurring and whether or not there is ongoing waste disposal rather than waste "treatment".

Response: Waste codes are provided on page 4 of Attachment A in the Permit Application. As stated in the Permit Application, vadose zone monitoring is not appropriate due to the limited thickness of the vadose zone, shallow saturated zone conditions, and previous data from air and soil gas monitoring. Supporting information is provided in the Permit Application by reference.

Comment: DTSC fails to fulfill its own regulatory requirements. It is stated that "[t]he postclosure permit outlines procedures to fulfill regulatory requirements for...(2) environmental monitoring...." Certain environmental monitoring requirements are required by the California Code of Regulations, title 22, (title 22, CCR) to be specified in the permit not merely "[outlined]". Title 22, CCR, [66264.91(b) clearly states "[t]he Department shall specify in the facility permit the specific elements of each monitoring and response program. [DTSC has failed to do this. Referring to separate document(s)--- not even included as attachments to the draft permit---is simply inadequate.

Response: The requirements for California Code of Regulations, title 22, section 66264.91(b) are detailed in item a), section 4, part III, of the Draft Permit with the specific requirements set forth in the Approved Application

which is incorporated by reference into the Draft Permit..

Comment: A groundwater protection standard (GWPS) is required to be established by DTSC under title 22 CCR [66264.92 which shall consist of the list of constituents of concern (COCs)[title 22 CCR [66264.93], concentration limits [title 22 CCR [66264.94], and the points of compliance (POCs) and all monitoring points [title 22 CCR [66264.95]. However, in accordance with title 22 CCR [66264.93, DTSC is particularly required to specify in the permit--- not in the permittee's application out in the ether somewhere--- those COCs for the post-closed unit to which the GWPS shall apply. These COCs shall be all waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the closed unit. DTSC fails to do that in this draft permit. The public/reader is referred to a document that is not in evidence as part of the permit. There should be a list of the COCs in the body of the permit. In effect, DTSC has deliberately concealed the details of the permit from the public with a policy of [streamlining] that amounts to application of an underground regulation. Similar comments hold for most of this [environmental monitoring section].

Response: The requirements for California Code of Regulations, title 22, section 66264.92 – 66264.95 are detailed in items b), c), d), and e), respectively in section 4, part III, of the Draft Permit. Within these items, respective sections are referenced within Appendix I of the Approved Application, and were available to the public during the public comment period in the designated repositories, and posted on the internet during the public comment period.

Comment: PART VI - California Code of Regulations, title 22, requires that corrective action be specified in the permit. This is not done. Only “boiler plate is included.” Is any corrective action ongoing at this Facility? If the foregoing are yes, how is DTSC recovering its oversight costs? Isn't DTSC required by statute to recover such costs? Isn't a mechanism supposed to be in place to allow such recovery----before the costs are incurred? Doesn't DTSC run a risk of the public having to eat the oversight costs by the manner in which this permit is written? California Code of Regulations, title 22, section 66270.32, indicates that a permit “...shall include terms and conditions as the Department determines necessary to protect human health and the environment.” Obviously, DTSC believes that empty boilerplate is all that is necessary to protect human health and the environment.

Response: Corrective action investigation activities were previously completed and the nature and extent of groundwater contamination has been determined. Currently, groundwater is under going restoration under Post-closure care. Thus, corrective action activities are not ongoing and no associated oversight costs are being incurred. Corrective action re-opener language, however, is required in the Draft Permit. In the event future corrective action is required, this permit language provides the mechanisms to start, if necessary, new corrective action activities to continue protecting human health and the environment.

Current Facility activities such as pumping and treatment of groundwater, perhaps, can be interpreted by some as Corrective Action activities. However, all of the site activities are identified as Post-closure care in the Permit and Permit Application. The complete cost of the post-closure care activities are included in the Post-closure cost estimate found in the Permit Application.

Comment: PART VI - Has corrective action financial assurance been established for the facility in accordance with the intent of Health and Safety Code (H&SC) [25200.10(b)]? It is widely known that DTSC fails to comply with this statute, allowing permit applicants to defer the establishment of assurances of financial responsibility for corrective action at facilities. The usual means of deferral is through an enforcement order such as is cited in this draft permit. H&SC requires that, ***[When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.]*** [H&SC [25200.10(b)] Title 22 states ***[That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.]*** [Title 22 CCR [66264.101(b)] Currently DTSC fails to require assurance of corrective action financial responsibility in the permits that it issues. Has it failed again to require such ***assurances of financial responsibility*** for corrective action? Note, that the schedule of compliance provided in the draft permit is inadequate and incomplete.

Response: Please see previous response.

Comment: PART V.1 - Please explain why the special conditions include that “no hazardous wastes may be disposed of on-site.” Does this Facility continue to accept wastes of any kind? If so, is money being set aside out of the operation to provide for any of the assurance of financial responsibility (AFR) requirements? If so, why is corrective action AFR not included in the 16 page “Permit”?

Response: The special condition is included for emphasis that future activities do not include the on-site disposal of hazardous wastes. The Facility is not authorized to accept wastes of any kind. See previous responses regarding financial responsibility requirements.

Comment: PART V.2 – DTSC has determined that a land-use covenant is reasonably necessary. Where is it? Why is such an important item included essentially as a “compliance schedule” item? Since this is a post-closure permit renewal, please explain why this LUC has been delayed so long? Aren’t LUCs required when any facility closes with “waste-in-place”-----at the time of closure??? Didn’t partial closure occur here? Why did DTSC ignore this until now? Why wasn’t it part of the Part B Application---and included by reference as DTSC so likes to do?

Response: It was determined during the evaluation portion of the permit renewal process that while a notation in the deed to restrict use of the property is in place, a Land Use Covenant (LUC) had not been completed. Thus, the completion of a LUC was included as a Special Condition with a Schedule for Compliance in the Draft Permit. The Facility is closed and the closure certification was acknowledged by DTSC on March 18, 1992

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Comment: PART V.3 – Interesting that groundwater monitoring finally is mentioned in one of DTSC’s post-closure permits---mostly DTSC seems to ignore a number of associated regulatory requirements. The reference to the Application is generally all the public gets to see in the “Permit” as noticed by DTSC on its website. Please explain why the periodicity for water level measurements and water quality sampling is showcased here but none of the other elements. Why isn’t the COC sampling more frequent for this landfill than say for a solvent recycler? Please explain the semi-annual monitoring being allowed herein instead of quarterly.

Response: The regulatory requirement for sampling frequency allows for semi-annual sampling intervals if justified, which the Facility has done and DTSC has approved. The required frequency for water level soundings, however, is restricted to quarterly. Although the Facility justified less frequent water level measurements, the regulations require quarterly measurements. The purpose of the subject Draft Permit condition is to allow for less frequent water level measurements without a permit modification in the event the regulations change, the Facility can request the change, and DTSC may approve or disapprove the change.

Comment: Please explain how a permit without corrective action has been determined under CEQA to be an NOE? DTSC goes to the legislature and asks for money to take care of BKK---where no corrective action AFR was ever obtained. Can we expect the same from this site someday? The environmental impact at some point if money isn't available to clean up because of a failure now to accommodate the regulations doesn't seem to worthy of an NOE.

Response: The project description as it relates to CEQA and as described in the Notice of Exemption (NOE) consists of renewing the Montezuma Hills Post-closure Permit. No physical changes to the site are proposed. Under California Code of Regulations, title 14, section 15061 (b)(3), where it can be seen with certainty, there is no possibility of significant environmental effect, an NOE is allowed for this project because no physical changes are proposed.

The comments you provided do not justify re-noticing the Draft Permit. DTSC appreciates your comments and interest in this project. If you have any questions about these comments, please call me at (916) 255-3602.

Sincerely,

//Original signed by//

Peter H. Bailey, P. G.
Engineering Geologist
Permit Renewal Team Leader

cc: see page 9

Philip B. Chandler
October 20, 2008
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